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April 3, 2012

Via Facsimile & First Class Mail

Fax No. 716-373-4522

Town of Allegany Planning Board
Town Hall
52 West Main Street
Allegany, New York 14706

Re: Request for Extension of Special Use Permit and Site Plan approvals for Allegany Wind Farm pursuant to Section 8.05(E) and Section 9.05(E) of the Town of Allegany Zoning Ordinance II

Dear Board Members:

Allegany Wind, LLC, hereby requests an extension of the Special Use Permit and Site Plan approvals for the Allegany Wind Farm pursuant to Section 8.05(E) and Section 9.05(E) of the Town of Allegany Zoning Ordinance II. As you know the Planning Board granted a Special Use Permit and Site Plan approval for the wind farm project on July 11, 2011. Consistent with the provisions of the Zoning Ordinance, the Special Use Permit and Site Plan Approval state that if work has not commenced within one year of approval, Allegany Wind may seek an extension from the Planning Board.

Immediately following the issuance of the approvals, opponents of the wind farm project commenced litigation against the Town and Allegany Wind in Cattaraugus County Supreme Court. The litigation prevented construction of the project from moving forward at that time. Although the Town and Allegany Wind prevailed in the lawsuit at Supreme Court, the Petitioners have appealed the decision and the appeal is still pending before the Appellate Division Fourth Department. For various reasons, including financing, the Company is unable to proceed with the project until the litigation is finally resolved.

Moreover, as you know, the Town Board had considered imposing a moratorium on wind project development while it reviewed its zoning law in light of recent State power plant siting legislation. Apparently the Board has determined not to proceed with the Moratorium. However, during this consideration period the Company had committed to not seeking building permits for the project until the Town had the opportunity to review the zoning law.

As a result of the above circumstances, the Company will not be in a position to commence construction of the Project in the coming building season. Many of the project components have long purchase and delivery lead times. Similarly, construction crews and contracts must be in place well in advance of actual development.

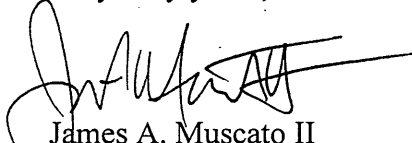
In light of the above, the Company requests an extension of the Special Use Permit and Site Plan approvals for an additional year. The one (1) year extension will provide time for the Company to make the final commitments to prepare for commencement of construction after the appeal is decided.

This application is consistent with the Zoning Ordinance, (See Section 8.05(E) and Section 9.05(E)), which authorizes the Planning Board to grant extensions of time for special use permits and site plan approvals. Under these general provisions we respectfully submit that the extension is warranted in this case in light of the litigation delay and the Town Board review outlined above as well as the fact that there have been no changes in circumstances regarding the Project (See Salkin, New York Law of Zoning Practice, §29:34, pg 29-63)(citations omitted).

We also note that the requirements for issuing extensions are minimal. The grant of an extension is considered a ministerial act which does not trigger SEQRA or other notice or hearing requirements. (420 Tenants Corp v EBM Long Beach, LLC 41 AD3d 641, 643 [2nd Dept. 2007] *citing* Matter of New York Life ins. Co v Galvin 35 NY2d 52, 60 [1974]).

Accordingly the Applicant respectfully requests that pursuant to the Zoning Ordinance, the Planning Board agree to extend the Special Use Permit and Site Plan approval for one year, to July 11, 2013.

Very truly yours,



James A. Muscato II
Douglas H. Ward

cc: Jerry Dzuroff, Town of Allegany Code Enforcement Officer (via mail & facsimile)
Daniel Spitzer, Esq., Special Counsel to Planning Board (via mail & facsimile)
Carol Horowitz, AICP, Town Planner (via mail & facsimile)